

# **Assignment and Application of the Unique Identifier under the TSCA**

Public Meeting, May 24, 2017



# THE UNIQUE IDENTIFIER REQUIREMENT:

**TSCA section 14(g)(4) requires EPA to:**

1. Develop a system to assign a unique identifier for each approved CBI claims for specific chemical identity, which shall not be the specific chemical identity or a structurally descriptive generic term.
2. Apply the unique identifier consistently to all information relevant to the applicable chemical substance.
3. Annually publish and update a list of chemical substances, referred to by their unique identifiers, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim.

# UNIQUE IDENTIFIER REQUIREMENT (CONT'D)

## TSCA section 14(g)(4) (continued):

4. Ensure that any nonconfidential information received by the Administrator with respect to a chemical substance included on that list while the specific chemical identity of the chemical substance is protected from disclosure under TSCA section 14 identifies the chemical substance using the unique identifier.
5. When a CBI claim for specific chemical identity is denied, expires, or is withdrawn, and for which a unique identifier has been assigned, clearly link the specific chemical identity to the unique identifier in public information to the extent practicable.

# APPLICATION OF THE UNIQUE IDENTIFIER

## Apparent Conflict In Statutory Requirements

Applying the same unique identifier to all information pertaining to the same chemical substance could cause CBI to be revealed in certain circumstances



# EXAMPLE 1 OF POSSIBLE CONFLICT

*Company A files a Premanufacture Notice (PMN) and later commences import of Chemical X, for which its CBI claim for chemical identity is approved by EPA, resulting in Chemical X being placed on the confidential portion of the TSCA Inventory. Company B subsequently files a notice of substantial risk under TSCA section 8(e) on the same substance, which it is utilizing for research and development, also claiming chemical identity as CBI. EPA approves this claim and assigns the same unique identifier.*

By connecting submissions from different companies with the unique identifier, Company B can determine the confidential information that Chemical X is in US commerce. Both companies can now determine that another company has an active interest in the same chemical, and any non-CBI information about the other company, uses, or other information that might be in the other submission.



# VARIATION ON EXAMPLE 1

*In Example 1, if Company B chose to not claim chemical identity as CBI in its section 8(e) filing, and EPA applied the unique identifier to the section 8(e) submission, this submission could be readily linked to Company A's submission, and the confidential chemical identity in Company A's submission would be revealed to the public, along with the fact that Chemical X is in commerce in the United States.*





## EXAMPLE 2 OF POSSIBLE CONFLICT

*EPA receives and approves Company A's CBI claim for chemical identity in a Notice of Commencement (NOC). The substance is placed on the confidential portion of the Inventory and a unique identifier is assigned. Subsequently, Company B files a bona fide notice concerning the same substance. Company B does not claim chemical identity as CBI. In accordance with section 14(g)(4)(C), EPA applies the unique identifier to the public version of the bona fide submission.*

Applying the unique identifier to the bona fide submission effectively discloses the identity of Company A's chemical, and reveals that the substance is in US commerce. Because it is now not a secret that the substance is in US commerce, the substance would be removed from the confidential portion of the Inventory, and all information concerning uses, company identity, and other information that was not claimed as CBI in the underlying PMN, NOC, and the bona fide notice could be linked together, potentially further disclosing information about the chemical that the other company may have claimed as confidential.

# POSSIBLE ALTERNATIVE APPROACH 1

EPA ensures that any non-confidential information received by EPA concerning a confidential chemical substance identify the substance using *only* the unique identifier (i.e., EPA would remove any chemical identifying information from the submission, even if not claimed as CBI), so long as the confidential identity remains protected from disclosure. In this way, the public (including other companies) could identify the various submissions concerning a particular chemical, but could not identify the specific chemical.



## POSSIBLE ALTERNATIVE APPROACH 2

Unique identifiers, once assigned, are applied to other submissions concerning that chemical substance, but only those that are submitted by the *same* person/company. Additional submissions concerning the same substance that are submitted by a different company would be assigned a different unique identifier. The unique identifier would not be applied to or associated with non-confidential information if the effect of that application would be to reveal the identity of an approved confidential chemical that is otherwise protected from disclosure under section 14. The public would be able to link some submissions on the same chemical, but not necessarily all submissions on that chemical.

# OTHER APPROACHES?

In addition to today's meeting, EPA is also accepting written comment. Please submit those comments to EPA docket number EPA-HQ-OPPT-2017-0144, by **July 7, 2017**.